

DATE: November 29, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-08671

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL H. LEONARD**

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 39-year-old man who immigrated to the U.S. from Afghanistan in 1998. He obtained U.S. citizenship in 2005. After becoming a U.S. citizen, he worked as a contract linguist for about 18 months in Afghanistan where he served in harm's way with members of the U.S. armed forces. He is married to a U.S. citizen who is also an Afghan native. They have three young sons who are native-born U.S. citizens. Although he has family ties to Afghanistan, his most significant contacts and ties are to the U.S. Applicant has mitigated any potential foreign influence security concern. Clearance is granted.

STATEMENT OF THE CASE

This is a security clearance case. Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on September 16, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges a security concern under Guideline B for foreign influence based on Applicant's family ties or connections to Afghanistan.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On September 29, 2007, Applicant replied to the SOR and requested a decision without a hearing. Department counsel timely requested a hearing on October 12, 2007.³ The hearing took place as scheduled on November 7, 2007, and the transcript was received on November 26, 2007.

FINDINGS OF FACT

Under Guideline B, the SOR alleges that Applicant may be subject to foreign influence due to his family ties or connections to Afghanistan. Applicant admits the factual allegations in SOR subparagraphs 1.a–1.e. In addition, the following facts are established.

Applicant is a 39-year-old linguist employed by a language-related services company. He has worked for the company since October 2005. He is fluent in Pashto and Dari, which is the Afghan dialect of Farsi (Persian). He immigrated to the U.S. in 1998 via his marriage to a U.S. citizen (and an Afghan native). He became a naturalized U.S. citizen in 2005. He is a first-time applicant for a security clearance, although he held an interim security clearance without problems until this action was commenced. He is currently in an unpaid status with his company until this action is resolved.

Applicant has immediate family members who are now living in Kabul, Afghanistan. His mother and father are both retired. Applicant sends his parents about \$150 monthly to assist them in their retirement. His father previously worked as a driver. His five younger brothers live with their parents. None of his brothers work for the government of Afghanistan, and all of his family members are opposed to the Taliban. His sister is a lawful resident alien living in the U.S., and she is married

¹ Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

³ Directive, Enclosure 3, ¶ E3.1.7 (department counsel may request a hearing within 20 days of receipt of an applicant's answer to an SOR).

to a U.S. citizen. She is employed cleaning offices. Applicant has a close family, but his contact is limited to speaking with his parents on the telephone. He sometimes speaks to a brother when he calls his parents. He calls his parents once or twice a month and for certain holidays.

Applicant was born in Kabul in 1968. He was raised in Kabul and completed his secondary education there. In approximately in 1990, Applicant, and his family of five brothers, one sister, and mother and father, relocated from Kabul to another area of the country that they believed was safer. The family's move was motivated due to concern about the Taliban.

In approximately 1991–1992, Applicant and his family moved to Pakistan. Applicant worked selling produce at a local market. In about 1995, Applicant saw, but did not meet, his future wife when she had traveled from the U.S. to Pakistan to visit family. She had previously immigrated to the U.S. and obtained U.S. citizenship in 1994. After her return to the U.S., Applicant approached her eldest brother (her father was deceased) and requested permission to marry in keeping with Afghan custom and tradition. The brother agreed to talk with his sister about the proposal. After several months, the brother informed Applicant that his sister would travel to Pakistan in 1996 and she would decide if she would marry Applicant. She arrived in 1996 and met Applicant in accordance with Afghan custom and tradition. She accepted the proposal, and in due course she and Applicant married in October 1996.

Applicant's wife returned to the U.S. after the marriage ceremony and she submitted the necessary paperwork for Applicant's immigration to the U.S. He arrived in the U.S. in January 1998. They have three sons, ages 6, 7, and 8, all of whom are native-born U.S. citizens. Applicant's sons attend public school.

He has been gainfully employed since at least September 1998, sometimes working two jobs. In about March 2005, Applicant left one job because his wife accepted a six-month contract as a linguist in Afghanistan. During this period, Applicant was the primary care giver for their children. His wife served as a linguist for a medical team that traveled throughout the country.

After his wife returned, and after becoming a U.S. citizen in September 2005, Applicant accepted a linguist position and traveled to Afghanistan on official travel orders in about October 2005 (Exhibit A). As his family had returned to Kabul in light of the overthrow of the Taliban, Applicant sought permission from his site manager to visit his family. The site manager, in turn, sought approval from the Army who approved his request. Applicant visited his family for one day in October 2005. A subsequent request from Applicant was not approved by the Army, and Applicant honored that decision.

Applicant served as a linguist in Afghanistan for a total of 18 months in three six-month periods as follows: October 2005–April 2006, May 2006–October 2006, and December 2006–June 2007. In between, he returned to the U.S. to see his wife and children. Applicant served with military intelligence and special forces elements of the U.S. Army (Exhibits B and D). Several soldiers have submitted character references on behalf of Applicant, and they describe Applicant as a dedicated and valuable team member (Exhibit B). The most significant letter was written by a special forces officer and detachment commander who had this, in part, to say about Applicant:

[Applicant] accompanied the detachment on several operations in the Kandahar Province. His skills assisted the Commander in the employment of Afghan forces while in a very intense battle against the Taliban that lasted 2 days, 2 nights, and took the lives of 5 friendlies and wounded one. During the battle [Applicant] displayed the courage and loyalty to the United States that goes beyond his call of duty. He was the person who passed information about the enemy situation and impending attack in order to prepare a defense that saved many lives.

* * *

He is a strong hearted man with compassion for what he does. He takes pride in his work and requires little supervision. [Applicant] is a person whom our detachment had entrusted and we were not let down. [Applicant] displays extreme loyalty to the American forces and our goals for Afghanistan (Exhibit B at 5).

Neither Applicant nor his spouse has any financial interests in Afghanistan. Their financial interests are all in the U.S. and consist of a home (with a mortgage), a bank account with several thousand dollars, vehicles, and personal property.

Administrative notice is taken of the certain facts about Afghanistan as described in the government's written request (Exhibit 2). Seven of the eight source documents for the request are reports by the U.S. Department of State, and the eighth is from the Director of National Intelligence. In general terms, the request describes Afghanistan's history since it became an independent nation in 1919, the U.S. Government's relationship with and concerns about Afghanistan, and the current geopolitical situation in Afghanistan. For example, in a recent travel warning, the State Department warns against travel to Afghanistan by U.S. citizens due to ongoing threats to kidnap or assassinate U.S. citizens and the inability of Afghan authorities to maintain order and ensure safety. In addition, the Taliban continue to seek to undermine the democratically elected government and use terrorism against Afghans, U.S., and NATO personnel.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.⁴ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁵ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁶ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.").

⁵ *Egan*, 484 U.S. at 531.

⁶ Directive, Enclosure 3, ¶ 3.2.

security clearance.⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁸ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ *In Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹² The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹³

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁴ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

CONCLUSIONS

⁷ Directive, Enclosure 3, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁹ Directive, Enclosure 3, ¶ E3.1.14.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁴ Executive Order 10865, § 7.

Under Guideline B for foreign influence,¹⁵ a security concern may arise due to foreign contacts and interests “if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.”¹⁶ There are two disqualifying conditions¹⁷ that could raise a security concern and may be disqualifying in this case:

DC 1. [C]ontact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

DC 2. [C]onnections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Of course, the mere possession of close family ties with a person in a foreign country is not—as a matter of law—disqualifying under Guideline B. But if only one relative lives in a foreign country and an applicant has contact with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.¹⁸

Here, the two disqualifying conditions apply because Applicant has contacts with and connections to his immediate family members in Afghanistan. He comes from a large and close family, most of whom live in Afghanistan. He has regular telephonic contact with his parents and sometimes his brothers. He sought and obtained permission to visit his family in October 2005 during his first work assignment in Afghanistan. These circumstances create the potential for a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his ties to immediate family members, primarily his parents, in Afghanistan. Also, the circumstance of his financial support to his parents is relevant because it indicates the strength of his family ties. The \$150 monthly payments, however, are not enough to constitute a substantial business, financial, or property interest in a foreign country and the fifth disqualifying condition under the guideline does not apply.

Four of the six mitigating conditions¹⁹ under the guideline may apply to the facts and circumstances of this case:

¹⁵ Revised Guidelines at pp. 5–6 (setting forth the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at p. 5.

¹⁷ Revised Guidelines at p. 5.

¹⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

¹⁹ Revised Guidelines at p. 6.

MC 1. [T]he nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

MC 2. [T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

MC 3. [C]ontact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

MC 4. [T]he foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

The first and third MC do not apply because Applicant's relationships with his immediate family members in Afghanistan are of sufficient magnitude or strength to negate these two MCs. He has regular contact with his parents and traveled to see them when he was in Afghanistan in 2005. In the post-9/11 world, there is at least a remote or slight possibility that dangerous elements (e.g., the Taliban)²⁰ within Afghanistan could attempt to use his family members to coerce or pressure Applicant.

But Applicant did establish that the second MC applies in his favor. The record evidence supports a conclusion that Applicant has a depth of loyalty to the U.S., so that he can be expected to resolve any conflict in favor of the U.S. interest. He demonstrated his depth of his commitment to the U.S. by serving 18 months, at times coming in harm's way, assisting the U.S. armed forces in Afghanistan. Indeed, according to the special forces detachment commander, Applicant's performance of duty on one particular occasion could be described as heroic. In addition, his spouse served as a linguist with the U.S. armed forces in Afghanistan. Suffice it to say, they are few households in the U.S. where both spouses have volunteered to work in a combat zone.

Also, Applicant established that the fourth MC applies to his travel to Afghanistan and visiting his family in October 2005. First, Applicant traveled to that country on official governmental orders (Exhibit A). Other than the three trips to Afghanistan via official orders, Applicant has not traveled there on his own. Second, he visited his family only after he received approval through his site manager and from the Army. His second request to visit was denied, and he accepted that decision. Given these circumstances, Applicant is entitled to mitigation under MC 4.

²⁰ See Exhibit 2 (setting forth the U.S. Government's concerns about Afghanistan and the geopolitical situation in Afghanistan).

To sum up under the whole-person concept, this is not a case of “divided loyalties”²¹ with an applicant who has one foot in the U.S. and one foot in his native country. On the contrary, the evidence shows Applicant has both feet planted in the U.S. and that his most significant contacts and ties are to the U.S. For example, both he and his wife are U.S. citizens, their three sons are native-born U.S. citizens, and his employment and financial interests are in the U.S. His service on behalf of the U.S. in a combat zone is further evidence of the strength of his ties to the U.S. This circumstance and the favorable character letter from the special forces commander deserve substantial weight. Given all these circumstances, the record evidence supports a conclusion that Applicant can be expected to resolve any potential foreign influence or pressure by either coercive or non-coercive means in favor of the U.S. interest.

After weighing the record evidence as a whole, Applicant has explained, extenuated, or mitigated the foreign influence security concern. And Applicant has overcome the case against him and satisfied his ultimate burden of persuasion to obtain a favorable clearance decision. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

_____ SOR ¶ 1–Guideline B: For Applicant

Subparagraphs a–e: For Applicant

DECISION

_____ In light of all the circumstances, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

Michael H. Leonard
Administrative Judge

²¹ Revised Guidelines at p. 5.